

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X	
Kerry Colin Keane,	:
	:
Petitioner,	:
	:
-against-	:
	:
Rush Media, LLC,	:
	:
Registrant.	:
-----X	

Opposition No. 122,816

ANSWER

Registrant, Rush Media, LLC ("Registrant") by its attorneys, Pryor Cashman Sherman & Flynn LLP, as and for its Answer to the counterclaims asserted in the Answer to Notice of Opposition ("Answer") filed on behalf of Petitioner Kerry Colin Keane ("Petitioner"), respectfully responds as follows:

1. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 25 of the Answer.
2. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 26 of the Answer, except admits that the United States Patent and Trademark Office's database lists Petitioner as the owner of the RUSH NEW MEDIA trademark application.
3. Registrant lacks knowledge or information sufficient to form a belief as to

the truth of the allegations set forth at Paragraph 27 of the Answer.

4. Registrant denies each and every allegation set forth at Paragraph 28 of the Answer.

5. Registrant admits the allegations set forth in Paragraph 29 of the Answer.

6. With respect to the allegation set forth at Paragraph 30 of the Complaint, Registrant admits that Peitioner has filed a baseless, unsupportable and totally frivolous counterclaim against Registrant seeking cancellation of Registrant's registration No. 2, 457,235, and Registrant respectfully refers the Trademark Trial and Appeal Board to Registrant's registration for a true and correct description of the goods and services set forth therein.

7. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 31 of the Answer.

8. Registrant denies each and every allegation set forth at Paragraph 32 of the Answer, and further avers that: (i) Petitioner's allegation of fraud is false and defamatory; and (ii) Peitioner has failed to plead the alleged "fraud" with any particularity.

9. Registrant denies each and every allegation set forth at Paragraph 33 of the Answer.

10. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth at Paragraph 34 of the Answer, except admits that Registrant applied to register the RUSH MEDIA trademark on December 7, 1999 and that the United States Patent and Trademark Office's database cites June 30, 1999 as the filing date of Petitioner's application.

11. Registrant denies each and every allegation set forth at Paragraph 35 of the

Answer.

12. Registrant denies each and every allegation set forth at Paragraph 36 of the

Answer.

13. Registrant denies each and every allegation set forth at Paragraph 37 of the

Answer.

14. Registrant (i) denies that Petitioner has any right to use, register and/or to expand the use of its RUSH NEW MEDIA trademark; (ii) denies that Petitioner will be damaged and/or injured by Registrant's Registration; and (iii) admits that Registration No. 2,457,235 may become incontestable after five years.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The counterclaims fail to state any claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Petitioner lacks standing to assert its claims.

THIRD AFFIRMATIVE DEFENSE

Petitioner's assertions are barred by the equitable doctrines of laches, waiver, estoppel and/or acquiescence and unclean hands.

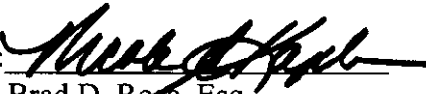
FOURTH AFFIRMATIVE DEFENSE

Petitioner has failed to plead its allegation of fraud with particularity and, as a result, the counterclaims must be dismissed.

WHEREFORE, Registrant respectfully requests that Opposition No. 122,816 be granted in its entirety and that the counterclaims be dismissed in their entirety.

Dated: October 10, 2003
New York, New York

Respectfully submitted,

By: 
Brad D. Rose, Esq.
Nicole E. Kaplan, Esq.

Pryor Cashman Sherman & Flynn LLP
410 Park Avenue
New York, New York 10022
(212) 421-4100

Attorneys for Registrant, Rush Media, LLC

Certificate of Service by Express Mail

"Express Mail" mailing label No. EL 983079411 US

I hereby certify that a true and correct copy of this ANSWER is being served by "Express Mail" by depositing the same as Express Mail with the United States Postal Service and addressed to counsel for Applicant Kerry Colin Keane, on October 10, 2003 at the address listed below:

G. Roxanne Elings, Esq.
Greenberg Traurig LLP
885 Third Avenue
New York, N.Y. 10022

Signed: Eugene Koeng
Name: EUGENE KOENG

Certificate of Service by Express Mail

"Express Mail" mailing label No. EL 983079487 US

I hereby certify that this ANSWER is being deposited with the United States Postal Service "Express Mail" service under 37 C.F.R. § 1.10 on October 10, 2003, and is addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

Signed: Eugene Koenig
Name: ERGENE KOENIG

Certificate of Service by Express Mail

"Express Mail" mailing label No. EL 983079473 US

I hereby certify that a true and correct copy of this ANSWER is being served by "Express Mail" by depositing the same as Express Mail with the United States Postal Service and addressed to Applicant Kerry Colin Keane, on October 10, 2003 at the address listed below:

Kerry Colin Keane
437 Madison Avenue, 39th Floor
New York, N.Y. 10022

Signed: Eugene Koenig
Name: EUGENE KOENIG

PRYOR CASHMAN SHERMAN & FLYNN LLP

410 PARK AVENUE, NEW YORK, NEW YORK 10022-4441



10-14-2003

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #22

THAB

TELEPHONE: 212-421-4100

FAX: 212-326-0806

EMAIL: FIRM@PRYORCASHMAN.COM

WWW.PRYORCASHMAN.COM

WRITER'S DIRECT DIAL:

212-326-0417

WRITER'S EMAIL:

nkaplan@pryorcashman.com

October 10, 2003

VIA EXPRESS MAIL

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

**RE: Opposition No. 122,816
ANSWER on behalf of
Rush Media, LLC**

Dear Sir/Madam:

In connection with the above-referenced opposition proceeding, enclosed are the following documents:

1. ANSWER; and
2. A self-addressed return postcard.

Please acknowledge receipt of the enclosed materials by placing your receiving date stamp on the enclosed postcard and returning it to our office.

Sincerely,

Nicole E. Kaplan

Enclosures